



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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Matthew J. Strickler
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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
EAST WEST - HALLSLEY, L.L.C.
FOR
HALLSLEY SUBDIVISION
CHESTERFIELD COUNTY
VWP Individual Permit No. 04-1215**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and East West - Hallsley, L.L.C., regarding the Chesterfield County Property (TM#), for the purpose of resolving certain violations of State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "DCR" means Department of Conservation and Recreation.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
6. "Hallsley" means East West - Hallsley, L.L.C., a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Hallsley is a "person" within the meaning of Va. Code § 62.1-44.3
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
9. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
10. "PFO" means palustrine forested wetland.
11. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
12. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.
13. "Property" or "Parcel" means the tract of land owned by Hallsley and located southeast of Mount Hermon Road (Route 684), southwest of Old Hundred Road (Route 652) and to the north of Swift Creek, in Chesterfield County, Virginia.

14. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
15. "Regulations" means the VWP Permit Program Regulations, 9 VAC 25-210 *et seq.*
16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
17. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
18. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. Hallsley owns and developed the Property in Chesterfield County, Virginia.
2. On July 12, 2018, the Department issued NOV No. 1806-000757 to Hallsley for the violations observed during the May 23rd, May 30th and June 6th inspections. The following describe the staff's factual observations, and identify the applicable legal requirements.
 - a. Staff observed that riprap was placed at Impacts TUI-15, TUI-2, TUI-3, TUI-6, and Impact 2 (Carroll Tract) temporary stream crossings. Staff observed, riprap was placed in the stream within the temporary impact area of Impact C, north of section 24. Additionally, DEQ staff found a boardwalk installed in the surface waters of Impact areas TUI-5, TUI-9, and TUI-20. Staff also observed, north of Impact Areas TUI-7 and PUI-2, approximately 100 square feet of unauthorized forested wetland impact due to the installation of a modified DI-7. Staff observed that 300 square feet of forested wetlands have been filled with gravel and a bridge

has been installed to create a path to a boardwalk. These impacts were not authorized by VWP Permit No. 04-1215.

VWP Individual Permit 04-1215 Part I.C.19 states, "All temporarily impacted streams and stream banks shall be restored to their original elevations and contours within 30 calendar days following the construction at that stream segment, and the banks shall be seeded or planted with the same vegetative cover type originally present along the banks, including supplemental erosion control grasses if necessary but not including invasive species identified on DCR's Invasive Alien Plant Species of Virginia list. The permittee shall take all appropriate measures to promote and maintain the revegetation of temporarily disturbed surface waters through the second year post-disturbance."

VWP Individual Permit 04-1215 Part I.C.18 states, "All temporarily disturbed wetland areas shall be restored to preconstruction conditions within 30 calendar days of completing work in the areas, which shall include re-establishing pre-construction contours, and planting or seeding with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested), except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list. The permittee shall take all appropriate measures to promote and maintain the revegetation of temporarily disturbed surface waters through the second year post-disturbance."

- b. Staff observed that the culvert at Impact PRI-20 has not been countersunk and is not maintaining low flow conditions. The culvert is disrupting the movement of aquatic life. Staff observed a silt fence in the wetland area at Impact PRI-7, which is disrupting hydrology. Staff observed debris located in the stream channel disrupting hydrology at TUI 9 and PRI 3. Additionally, staff observed culverts at Impact 3 and Impact 4 that have been blocked by riprap and sediment, respectively, within the Carroll Tract.

VWP Individual Permit 04-1215 Part I.C.2 states, "No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water."

VWP Individual Permit 04-1215 Part I.C.3 states, "At crossings of streams, pipes and culverts less than 24 inches in diameter shall be countersunk a minimum of three inches, and pipes and culverts greater than 24 inches in diameter shall be countersunk a minimum of six inches to provide for the re-establishment of a natural stream bottom and to maintain a low flow channel. For multiple-celled culverts, only the bottoms of those cells situated below the limits of ordinary high water shall be countersunk. To the greatest extent practicable, other cells, pipes, or culverts shall be elevated to provide a natural distribution of flood flows. The requirement to countersink shall not apply to extensions or maintenance of existing culverts that are not countersunk, to floodplain culverts being placed above ordinary high water, to culverts being placed on bedrock, or to culverts required to be placed on slopes 5% or greater."

VWP Individual Permit 04-1215 Part I.C.4 states, "Flows downstream of the project area shall be maintained to protect all uses."

- c. Approximately 4,165 square feet (0.1 acre) of forested wetlands have been cleared north and south of the permitted impact area at Impact PRI-10. This impact was not authorized by VWP Permit No. 04-1215.

VWP Individual Permit 04-1215 Part I.A. summarizes Permit activities authorized by the Department which are based on the initial application received May 21, 2004, and subsequent Department approved revisions. The latest Permit modification was February 5, 2018.

- d. DEQ staff observed sediment deposited in approximately 10 square feet of wetland upstream of Impact PRI-10 and in approximately 15 square feet of wetland upstream of Impact 4 within the Carroll Tract due to damaged silt fences. In addition, the silt fence has been damaged or is missing at Impact A north of section 24 and at Impact 3 within the Carroll Tract. Erosion and sedimentation controls and other best management practices were not installed in accordance with the Virginia Erosion and Sediment Control Handbook and maintained in good working order at the project area, leaving state waters at risk for secondary impacts.

VWP Individual Permit 04-1215 Part I.C.24 states: "Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading activities and maintained in good working order, to minimize impacts to surface waters. These controls shall remain in place only until clearing and grading activities cease and these areas have been stabilized."

- e. DEQ staff observed that boundary flagging to mark non-impacted surface waters within 50 feet of permitted activities or within the project or right-of-way-limits, is missing and/or damaged around non-impacted surface waters.

VWP Individual Permit 04-1215 Part I.C.25 states: "All non-impacted wetlands, streams, and designated upland buffers that are within the project or right-of-way limits, and that are within fifty feet of any project activities, shall be clearly flagged or demarcated for the life of the construction activity within that area. All non-impacted open water areas within the project or right-of-way limits, and that are within fifty feet of any project activities, shall be clearly flagged or demarcated, as practicable, for the life of the construction activity within that area. The permittee shall notify all contractors and subcontractors that no activities are to occur in these marked areas."

- f. Compensation for stream impacts has not been completed. Specifically, the onsite preservation of 21,997 linear feet of intermittent stream channel with 110.10 acres of stream buffer has not been completed in its entirety.

VWP Individual Permit 04-1215 Part I.J.1. states: "The permittee shall provide on-site stream compensation as follows: the creation of 593 linear feet of intermittent stream at a compensation-to-impact ratio of 1:1, and the preservation of 21,997 linear feet of intermittent stream channel with 110.10 acres of stream buffer. The compensation site(s) shall be preserved in perpetuity, as described in the final stream compensation plan and Part I.L.3.j."

3. On July 16, 2018 Hallsley responded to the NOV stating that all of the issues raised in the inspection reports have been addressed except for the planting plan. Hallsley submitted photographs to the Department to demonstrate compliance.
4. On July 27, 2018, Hallsley submitted a planting plan to the Department for the forested wetlands within section 17 on both sides of impact PRI-10. The Department approved the plan on August 6, 2018.
5. On October 25, 2018, Hallsley provided DEQ with a Bill of Sale for the wetland and stream credit purchases.
6. On November 13, 2018, Hallsley completed the planting per the Department approved plan and provided photographic documentation.
7. Based on the results of the May 23, May 30 and June 6, 2018 site inspections, review of the permit file, the submittals on July 27, October 25, November 13, of 2018 and the February 20, 2019 meeting, the Board concludes that has violated permit Va. Code § 62.1-44.15:20(A), 9 VAC 25-210-50(A), VWP Permit Part I.C.18, VWP Permit Part I.C.19, VWP Permit Part I.C.2-4, VWP Permit Part I.A., VWP Permit Part I.C.24, VWP Permit Part I.C.25, and VWP Permit Part I.J.1., as described above.
8. On November 19, 2019, the Department conducted a site visit of the Property and observed the sediment removal and wetland restoration was complete and no further action was required.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Hallsley and Hallsley agrees to pay a civil charge of \$22,750 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Hallsley shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Hallsley shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Hallsley for good cause shown by Hallsley, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Hallsley admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Hallsley consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Hallsley declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Hallsley to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Hallsley shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Hallsley shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Hallsley shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

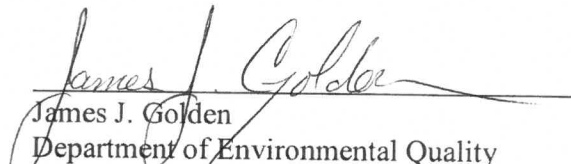
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Hallsley. Nevertheless, Hallsley agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Hallsley has completed all of the requirements of the Order;
 - b. Hallsley petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Hallsley.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Hallsley from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Hallsley and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Hallsley certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Hallsley to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official or officer of Hallsley.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Hallsley voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 21 day of April, 2020.


James J. Golden
Department of Environmental Quality
Piedmont Regional Director

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East West - Hallsley, L.L.C. voluntarily agrees to the issuance of this Order.

Date: 2/13/20 By: [Signature], Vice President
(Person) (Title)
East West - Hallsley, L.L.C., by EWP Entity Management Corporation, its Manager

Commonwealth of Virginia

City/County of Chesterfield

The foregoing document was signed and acknowledged before me this 13th day of

February, 2020, by Daniel Jones who is

Authorized Representative of, on behalf of the company.

[Signature]
Notary Public

7539811
Registration No.

My commission expires: 12/31/2021

Notary seal:

